

THE EUROPEAN NGO PLATFORM ON ASYLUM AND MIGRATION

Statement by the European NGO Platform on EU Asylum and Migration (EPAM)¹ on elements for the future EU Programme on Asylum and Migration

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The economic crisis negatively affects the lives of all EU citizens, but especially the lives of migrants and refugees; a loss of jobs and residence status has been accompanied by a rise of racism and xenophobia. Despite EU Member States' commitment and declarations to uphold human rights standards in creating an area of freedom, security and justice for all², the members of the European NGO Platform on Asylum and Migration (EPAM), observe in their daily work across the European Union and in neighbouring countries that the human rights of asylum seekers, refugees and migrants are often violated, and they face situations of increased vulnerability, violence, abuse and exploitation.

In 2014, the EU will set the agenda for the forthcoming years in the area of Freedom, Security and Justice, including asylum and migration policies, to succeed the current Stockholm Programme. In this next phase, European institutions should ensure respect for human dignity and human rights, solidarity, pluralism, non-discrimination, equality and the approximation of rights of third-country nationals to those of EU citizens. These principles were contained in the Presidency conclusions of the 1999 Tampere European Council on Asylum and Migration, and the issues at stake merit a further and comprehensive consideration by the heads of EU Member States' governments. A coordinated and human rights-based approach should be strengthened and promoted amongst relevant DGs of the European Commission and other EU institutions.

With this statement, the members of the European NGO Platform on Asylum and Migration (EPAM) set out key priorities for the future of European migration and asylum policy. These are essential for the creation of an open and inclusive Europe where human beings are put at the centre of policies. These key priorities have been identified as common for the members of this platform, while additional and more detailed recommendations from members of the platform on specific issues in the field of asylum and migration will be submitted in the consultation process leading to the adoption of the future programme.

¹ The European NGO Platform on EU Asylum and Migration (EPAM) is a group of European non-governmental organisations and networks seeking to contribute to the development of asylum, refugee and migration policy in the European Union. The Platform was created in 1994 at the initiative of UNHCR. Meeting regularly to share information and to coordinate advocacy strategies, the group is politically neutral and independent.

² Tampere European Council Conclusions, 1999

Key Priorities

1. **Better monitoring and effective implementation of the EU asylum and migration *acquis* are necessary to ensure compliance with international legal obligations and to identify specific needs for future asylum and migration policy.**

EU asylum and migration policies will inevitably require more effective harmonisation and clarity. An assessment of the quality of the implementation of EU law at national level has been undertaken in some fields (e.g. asylum, family reunification, return) but not all (e.g. entry and residence directives, visa and border regulations). The rapidly changing fields of asylum and migration necessitate timely, regular and comprehensive assessments of EU legislation. Training programmes, practical cooperation measures, quality management standards and the availability of sufficient resources are all key components in achieving both quality policy-making and implementation of good practices on the ground. Effective and comprehensive monitoring, evaluation, assessment tools and data collection mechanisms, which include age and gender relevant data, are necessary not only to monitor compliance with international legal obligations but also to identify specific needs for future asylum and migration policy. NGO networks are well placed to provide essential information and to verify practice and impact. They stand ready to support EU institutions in monitoring the implementation of international human rights standards, including the jurisprudence of European courts. The European Commission should closely monitor the implementation of the EU migration and asylum rules and make effective use of infringement proceedings in cases of violation or ineffective implementation of EU law.

2. **Migration and asylum policies should be further developed in dialogue with all stakeholders, including civil society organisations.**

Civil society organisations should be recognised as crucial actors in developing and evaluating existing policies on migration, integration and asylum. They play a vital role in supporting and enabling migrants, asylum seekers and beneficiaries of international protection to access their rights and secure livelihoods. Based on their commitment and expertise on the ground, NGOs expect more meaningful partnership at EU level in setting the agenda for the European Integration (and Migration) Forum and in the programming and evaluation of the new Asylum, Migration and Integration Fund. The European Social Fund and the new Asylum, Migration and Integration Fund should be implemented in a way that include all migrants, in particular the most vulnerable migrants, irrespective of residence status. Legal, administrative and practical barriers for funding organisations offering legal, humanitarian and social assistance should be removed.

3. **Policy making should be based on existing data and evidence.**

The EU institutions and agencies should have stronger mechanisms for data collection which make better use of expertise and knowledge of NGOs who provide advice and assistance to migrants, asylum seekers and beneficiaries of international protection. Instruments need to be developed which allow for

evidence on the living and working conditions of all migrants, including those with irregular residence status, to be compiled and more systematically included in policy making.

4. Border management policies and measures are obligated to ensure the application of all migrants' human rights.

The tragic events in recent years of deaths at sea and pushbacks of migrants at EU borders highlight the need for a critical rethink of the EU's asylum and migration policies and the management of EU borders. As Member States and the EU direct more financial and human resources to migration control measures at Europe's borders, the priority should be saving lives. In the pursuit of the legitimate aim of administering who enters a territory, measures have been taken that adversely affect the human rights of individuals at borders, including those seeking international protection. Borders are not zones of exclusion or exception for human rights obligations. Clearer and more transparent rules for protection at borders and search and rescue at sea need to be adopted to save lives. Systematic monitoring and permanent evaluation mechanisms at Europe's borders should be urgently established and include NGOs. It will be important for EU institutions and Member States to clearly stipulate responsibilities for upholding fundamental rights and responding to protection needs in border management operations.

5. Migration partnerships with third countries must ensure respect for migrants' rights as well as create sufficient channels for regular migration to Europe.

The financial crisis and subsequent austerity measures in Europe require that EU funding needs to be carefully targeted at those who need it most. The positive debate on migration and development needs to be followed up with the full package of, i.a. facilitated remittances and regular migration channels for countries of origin. Making EU development funds conditional upon migration control improves neither development nor migration management in countries of origin. The external dimension strand of the Asylum and Migration Fund must not merely serve migration control, but rather contribute to enhancing regular migration opportunities and protection space in third countries in a spirit of solidarity and responsibility sharing. Cooperation with third countries on border management must take adequately into consideration human rights impacts on migrants; financial and technical arrangements must be subject to third countries upholding the rights of migrants, asylum seekers, and beneficiaries of international protection in both law and practice.

6. Developing alternatives to detention is crucial to ensure compliance with human rights standards.

Protracted detention of irregular migrants and asylum seekers violates the fundamental rights to liberty and human dignity, yet has fast become routine practice rather than an exceptional measure. Detention should always be a measure of last resort, as already stipulated in EU law. Moreover, asylum seekers should never be detained merely on the basis of their application. In line with international human rights standards and the UN Convention on the Rights of the Child, states should expeditiously and entirely cease the detention of

children and families on the basis of their migration status. Alternatives to detention should urgently be developed – and will be less costly. Partnering with NGOs to exchange good practices on alternatives to detention as well as the undertaking of pilot projects on alternatives with expert NGOs will support the objective of respect for human rights and the credibility and compliance with human rights standards of the migration management system.

- 7. Return policies should prioritise assisted voluntary return and reintegration and, where enforced return appears necessary, be carried out in a safe, dignified and sustainable manner in line with the EU Charter of Fundamental Rights.**

The European Commission should encourage EU Member States to invest in sustainable voluntary return and reintegration. NGO-State cooperation on monitoring returns should be further developed to achieve effective, independent and systematic external monitoring of return procedures across Europe. Access to justice must be ensured to all migrants in the process of return, including access to: legal representation and legal aid, interpretation and translation services, consular authorities and NGOs.

Where return is not possible for technical or other reasons, or where it would be inhumane, people should not be left in limbo. The European Commission should explore durable solutions for migrants who cannot be returned, including access to a regular residence status and access to social services, including housing, healthcare and education.

- 8. Member States need to improve channels for labour migration to Europe for migrants with different skills levels, and effective implementation of existing directives at national level should be promoted.**

Despite high unemployment in some Member States, labour markets in the EU require substantial net immigration of persons with different levels of skills and qualification. Currently this need is often “met” by informal, irregular arrangements, taking the form of irregular movements and irregular employment, often accompanied by severe abuse and exploitation. Although migrant workers currently make important social and economic contributions to labour markets and society, insufficient regular migration channels contribute to further pushing migrant workers lacking a regular residence status to the margins of society, augmenting their exposure to discrimination and violence by limiting their autonomy and independence. In order to address these needs and to prevent exploitation, transparent ways of regular employment are needed for migrants, asylum seekers and beneficiaries of international protection, with awareness of the specific needs and circumstances of female workers. Governments are obliged to properly implement new EU legislation impacting migrant workers, including the Single Permit, Seasonal Workers and Employers’ Sanctions directives. This will require more proactive monitoring and support for implementation, which will benefit from the active support of NGOs and EU institutions. EU institutions should strictly scrutinise whether Member States’ procedures for EU long-term residence exclude migrants who would otherwise qualify under EU law and jurisprudence. In addition, the European Commission

should encourage Member States to sign, ratify and implement the UN Migrant Workers' Convention.

9. Families entitled to family reunification should not face direct or indirect obstacles to exercise their right and to access justice under EU law.

The right to family reunification is enshrined in EU law, and the EU Directive 2003/86/EC aims at enabling family life. In practice, however, the application of European legislation to ensure family reunification remains inadequate. Families entitled to family reunification under EU law should not face any direct or indirect obstacles to asserting their rights and accessing justice. The European Commission has to proactively monitor the imposition of additional conditions for family reunification, which must be justified, proportionate, and effective for promoting the integration and right to family reunification of all entitled families, including low income groups, particularly migrant women. The EU Directive and the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union should be properly implemented by Member States. Facilitating the quick reunion of families is beneficial for societal integration.

10. Access to services – including health care, housing, education and justice – should be guaranteed for all migrants, regardless of their residence status.

The introduction of new and more flexible channels for labour migration in Europe should be accompanied by the adoption of positive measures to enable all migrants to access their fundamental rights such as the rights to healthcare, housing, education, justice and labour redress mechanisms. Service providers are often confronted with a dilemma: while emergency services and basic support are a fundamental right and should be granted to all, irrespective of the nationality and residence status of the persons concerned, they cannot be provided because service providers lack resources, cannot make use of public funding, or are criminalized for providing assistance to people without a regular residence status. Through legislation and programmes, access to basic services and facilities should be guaranteed for all migrants, irrespective of their residence status. The portability of social rights should also be further developed. These basic services need to be gender-sensitive and should include food, healthcare, education, access to justice, accommodation and other homeless services, such as hygiene facilities, laundry and storage. The necessary financial and human resources should be put at the disposal of organisations to enable them to work effectively with all people experiencing destitution, including migrants.

11. A Common European Asylum System (CEAS) must be achieved.

With the adoption of the CEAS in 2013, providing the basis for international protection in the EU, it will be of utmost importance to vigorously follow the transposition of the amended directives into national legislation and to evaluate their impact. Over the past years, NGOs have gathered a wealth of evidence on the detrimental impact of the Dublin system. The newly adopted Dublin III Regulation (Regulation 604/2013) has the potential to remedy some of the protection gaps identified. However, concerns remain that as long as there is

limited convergence and harmonisation in asylum policies and practices across Europe, asylum seekers subject to the Dublin system are at risk of having their rights violated. In the short term, the adverse impact of the system should be mitigated by a protection-sensitive application of the Dublin Regulation, including by ensuring that families are not separated, and refugees not prevented from seeking protection in countries in which they have stronger links. In the longer term, EU institutions and Member States must revisit and fundamentally revise the Dublin system to ensure that the right to asylum under the Charter of Fundamental Rights is fully guaranteed.

12. Enhancing international protection and sharing the responsibility to provide protection will require more courageous responses.

In view of the currently limited means to enter Europe through regular channels, it is imperative that the European Commission sustains its political and financial commitment to promoting refugee resettlement in Europe. With the Joint EU Programme for the Resettlement of Refugees, the European Commission has already provided an initial framework for joint priority setting of target regions and refugee profiles within a funding scheme for resettlement. This programme must be further strengthened to enable Europe to collectively resettle at least 20,000 refugees per year by 2020. Regular exchange among stakeholders must be further developed at both European and national levels. Programmes should ensure that refugees receive a permanent status, adequate integration measures and a welcoming environment at local level.

Addressing the current imbalance of providing protection among Member States had already been identified as important in the Stockholm Programme, however, to date, only some ideas have been developed. NGOs deplore that access to the territory and to protection remains so difficult that refugees are driven into the hands of smugglers and traffickers. It should therefore be a priority to identify better ways of sharing the responsibility to protect between Member States as well as with neighbouring countries in the South and East in the starting phase of the new EU programme, leaving space for the development of solidarity instruments in the second half of its term.

13. Proper implementation and application of anti-trafficking legislation - with focus on victim-centred and gender sensitive provisions - is central in combating trafficking.

In the fight against trafficking, the Directive on preventing and combating trafficking in human beings (2011/36/EU) with its orientation on protection and prevention is of central importance. The gendered aspects of human trafficking must be acknowledged and addressed with efficient and appropriate preventive and protective measures. The Commission must ensure that provisions on protection and prevention are transposed and effectively implemented in national legislation and practice. The EU should also promote and encourage the ratification and implementation of the Council of Europe Convention on Action against Trafficking in Human Beings and support the monitoring mechanism of the Convention.

14. Migrant victims of violence should be protected, regardless of residence status.

The European Commission should monitor and ensure the effective transposition and implementation of the Victims' Directive (2012/29/EU), establishing "minimum standards on the rights, support and protection of victims of crime" to strengthen the rights of all victims and their family members, irrespective of their residence status as stated in Article 1 of the Directive. The European Union should sign and ratify the Council of Europe Istanbul Convention, which introduces the possibility of granting migrant women an autonomous residence permit if they are trapped in an abusive relationship with a spouse or partner on whom their residence status depends; and guarantees the suspension of any expulsion procedure. The Commission should also encourage Member States to sign, ratify and properly implement the Convention.

15. Survivors of torture must benefit from the right to rehabilitation at every stage of an asylum and migration procedure, from arrival to integration in the country of destination.

The EU institutions should ensure that Member States comply with their international obligations in terms of torture victims' right to a holistic rehabilitation. In line with international human rights standards and the United Nations Committee Against Torture, victims of torture are entitled to a combination of medical, psychological, legal and social services, throughout the migration and asylum process, from the early identification process to the integration. It is essential that all European bodies dealing with victims of torture and other vulnerable migrants (including those who have undergone or who are at risk of female genital mutilation) adopt a victim-centred approach and ensure synergies and cooperation between all stakeholders, whether at national or European level, throughout the different stages of the procedure. A feasibility study on the accession of the EU to the Convention against Torture should be requested as a first step toward ensuring consistency of obligations for Member States, either via the EU or directly.

The NGO Platform hopes that the programme for the forthcoming years in the area of Freedom, Security and Justice will strengthen the crucial role of civil society organisations through regular consultations with NGOs for setting the agenda on asylum, migration and integration policies, and to ultimately achieve a coherent and effective asylum and migration legal framework, that both ensures and promotes respect for all migrants' fundamental rights. 2014 presents a unique opportunity for Europe to set the agenda for a more rights-based approach to migration and asylum in Europe. The European NGO Platform on Asylum and Migration calls upon all actors involved to take this opportunity and use it wisely for the creation of an open and inclusive Europe.

NGO Platform Members

- **Amnesty International** European Institutions Office (AI-EIO) : www.amnesty.eu
- **Association Européenne pour la défense des droits de l'Homme (AEDH)**:
www.aedh.eu
- **Caritas Europa**: www.caritas-europa.org
- **Churches' Commission for Migrants in Europe (CCME)**: www.ccme.be
- **COFACE Confederation of Family Organisations in the EU**: www.coface-eu.org
- **EKD (Protestant Church in Germany)** office Brussels as member of CCME: www.ekd-bruessel.de
- **European Council on Refugees and Exiles (ECRE)**: www.ecre.org
- **European Network Against Racism (ENAR)**: www.enar-eu.org
- **European Network of Migrant Women**: www.migrantwomennetwork.org
- **European Women's Lobby**: www.womenlobby.org
- **European Federation of National Organisations Working with the Homeless (FEANTSA)**:
www.feantsa.org
- **European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe)**: www.ilga-europe.org
- **International Catholic Migration Commission (ICMC)**: www.icmc.net
- **International Federation for Human Rights (FIDH)**: www.fidh.org
- **International Rehabilitation Council for Torture Victims (IRCT)**: www.irct.org
- **International Rescue Committee (IRC)**: www.rescue.org
- **Jesuit Refugee Service (JRS) Europe**: www.jrseurope.org
- **Justice et Paix Francophone de Belgique** : www.justicepaix.be
- **Médecins du Monde (Mdm)** : www.medecinsdumonde.org
- **Médecins Sans Frontières (MSF)**: www.msf.org (as an observer)
- **Migration Policy Group (MPG)**: www.migpolgroup.com
- **Pax Christi International**: www.paxchristi.net
- **Platform for International Cooperation on Undocumented Migrants (PICUM)**: www.picum.org
- **Quaker Council for European Affairs (QCEA)**: www.qcea.org
- **Save the Children**: www.savethechildren.net/brussels
- **Solidar**: www.solidar.org